

# In the Supreme Court of the United States

OCTOBER TERM, 1949

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No. 13—ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF TEXAS

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## MEMORANDUM IN OPPOSITION TO THE MOTION OF STATE OF TEXAS TO PASS THE HEARING SET FOR MARCH 27

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The United States is vigorously opposed to the State's motion to delay the hearing of this case.

From the very beginning, since December 21, 1948, when the United States presented its motion for leave to file a complaint, the proceedings herein have been marked by dilatory tactics and numerous successive attempts on the part of the State to block entirely or to delay as long as possible the hearing on the merits. At first, months went by, while the State made various frivolous objections merely to the filing of the Complaint. Thereafter, upon the filing of the Complaint, it failed to make a proper response within the time

designated by the Court (September 1, 1949), and the Court had to reset the time within which an answer was required.

It was obvious from the inception of this litigation that the case would turn largely upon whether Texas had any valid special defenses that would render inapplicable the decision in *United States v. California*, 332 U. S. 19. Certainly, the attorneys for the State must have been directing their efforts in legal research over a long period toward the development of such special defenses. The brief filed by the United States is in the main merely an anticipatory reply to such defenses as the State may make.

The State is merely playing with words when it speaks of the limited time within which it may "reply" to the brief of the United States. In truth, it is the State that is strategically at an advantage, for it has had an extraordinarily long time within which to prepare a legal argument setting forth its alleged special defenses, while the United States was required to prepare its brief in answer to such anticipated defenses before receiving the State's brief. It remains primarily for the State to come forward, and set forth just what reasons it wishes to advance to justify treatment different from that accorded to California.

The case has already been characterized by delaying tactics that undoubtedly would not be tol-

erated in litigation between private parties. The State's motion for further delay should be denied.

Respectfully submitted.

PHILIP B. PERLMAN,

*Solicitor General.*

MARCH 1950.